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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,296	05/11/2001	Thomas Joseph Prorock	RPS920010017US1	6049
45211	7590	10/14/2004	EXAMINER	
KELLY K. KORDZIK WINSTEAD SECHREST & MINICK PC PO BOX 50784 DALLAS, TX 75201			MCALLISTER, STEVEN B	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 10/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/853,296	PROROCK ET AL. <i>81</i>
	Examiner	Art Unit
	Steven B. McAllister	3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 06 July 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-9 and 11-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-9 and 11-16 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 11-16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. 35 USC 101 requires a claimed invention to be tangible. As to claims 11-15, the claimed software although "adaptable" for storage on a storage medium, is not claimed as stored on any tangible medium, and is therefore intangible. As to claim 16, the software is claimed as "for" storage on a storage medium. This is interpreted merely as intended use and not as a statement that the program is stored on a storage medium.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 and 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 05-1666066 (066) in view of Walker et al (6,567,787).

066 shows receiving an input; determining and notifying that an override is required; receiving input from a manager; and automatically performing the override procedure for an authorized input. 066 does not show receiving an input from a biometrics device or comparing the input to a list of authorized inputs. Walker et al show receiving a biometric input comprising voice data and comparing the input to a list of authorized inputs (e.g., col. 8, lines 24-35). It would have been obvious to one of ordinary skill in the art to modify the method of 066 by receiving a biometrics input and comparing it with authorized inputs as taught by Walker et al in order to determine an authorization level of the person attempting to perform the override and to determine the user's identity via a characteristic that is inherent to that person.

As to claim 3, 066 in view of Walker et al show all steps except that the override procedure is a series of commands. However, it is notoriously old and well known in the art for an override procedure to comprise a series of commands. It would have been obvious to one of ordinary skill in the art to further modify the method of 066 as such in order to deal with more complex override procedures.

Regarding claims 5 and 15, it is noted that only further recitation is to the physical location of an apparatus and that this recitation does not further limit the method or the software. These claims are therefore considered rejected without treatment of the additional recitations. However, in order to speed prosecution they are treated in this action as if they were modifying an apparatus claim.

As to claim 5, 066 in view of Walker et al show all elements of the claim except that an input device is located remotely. However, it is notoriously old and well known

in the art to locate an input device remotely. It would have been obvious to one of ordinary skill in the art to do so in order location of such a device in a secure and convenient location.

066 shows an input device for receiving an input; circuitry for determining that an override is required; an output for operator notification, and circuitry for automatically performing the override procedure for an authorized input. 066 does not show a biometrics device; an input output adapter for receiving an input from the biometrics device; or circuitry for comparing the input to a list of authorized users. Walker et al show these elements. It would have been obvious to one of ordinary skill in the art to modify the apparatus of 066 by providing the biometrics input device and associated circuitry in order to determine an authorization level of the person attempting to perform an override and to determine the user's identity via a characteristic that is inherent to that person.

As to claim 8, 066 in view of Walker et al show all elements except that the override procedure is a series of software commands. However, it is notoriously old and well known in the art for an override procedure to comprise a series of commands. It would have been obvious to one of ordinary skill in the art to further modify the method of 066 as such in order to deal with more complex override procedures.

As to claims 11 and 16, it is noted that 066 in view of Walker et al show the software performing all claimed steps.

As to claim 13, 066 in view of Walker et al show all steps except that the override procedure is a series of commands. However, it is notoriously old and well known in the

art for an override procedure to comprise a series of commands. It would have been obvious to one of ordinary skill in the art to further modify the method of 066 as such in order to deal with more complex override procedures.

As to claim 15, 066 in view of Walker et al show all elements of the claim except that an input device is located remotely. However, it is notoriously old and well known in the art to locate an input device remotely. It would have been obvious to one of ordinary skill in the art to do so in order location of such a device in a secure and convenient location.

Response to Arguments

Applicant's arguments filed 7/16/2004 have been fully considered but they are not persuasive.

Applicant argues that the 101 rejection is improper. Applicant's attention is drawn to MPEP 2106(IV)(B)(1).

Applicant argues that the 103 rejection is improper. The examiner respectfully disagrees. As discussed in the rejection, 066 shows automatic overriding of at least one input upon the entering of the proper approval information by the manager. Walker is used only to teach the step of receiving an input from a biometrics device and comparing it to a list of authorized inputs (col. 8, lines 24-35).

As to Applicant's argument regarding motivation, Applicant is directed to col. 6, lines 1-10 of Walker.

As to Applicant's arguments regarding claims 5 and 15, the examiner respectfully disagrees.

With respect to the statement that "Applicants traverse the Examiner's assertion that it is notoriously old and well known in the art to locate an input device remotely", this statement does not form an adequate traversal of the "old and well known" statement (see MPEP 2144.03(C)). Furthermore, as instructed by that section of the MPEP, in light of the inadequate traversal, the subject matter of the "well known in the art" statement is held as admitted as old and well known.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. McAllister whose telephone number is (703) 308-7052. The examiner can normally be reached on M-Th 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert P. Olszewski can be reached on (703) 308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Steven B. McAllister

STEVE B. MCALLISTER
PRIMARY EXAMINER